

JUSTICE AND SECURITY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Oversight of intelligence and security activities

Section 2: Main functions of the ISC

50. *Subsection (1)* gives the ISC the power to examine or otherwise oversee the expenditure, administration, policy and operations of the Agencies.
51. *Subsection (2)* states that the ISC may examine or otherwise oversee such other activities of the Government in intelligence and security matters as are set out in a memorandum of understanding. The Government's intelligence and security work goes wider than the Agencies and is undertaken in parts of other Government bodies. These include the Joint Intelligence Organisation in Cabinet Office, the Office for Security and Counter-Terrorism in the Home Office and Defence Intelligence in the Ministry of Defence. This provision enables the ISC to provide oversight of the intelligence and security community beyond the Agencies. Intelligence and security functions, and the parts of Government departments that undertake those functions, may change over time. Describing those functions in a memorandum of understanding enables changes to be made to the ISC's remit, in response to changes to the structure and work of the wider intelligence community, by the agreement of the ISC and the Government. The ISC created by the Intelligence Services Act 1994 did in practice hear evidence from, and make recommendations in relation to, bodies other than the Agencies. These provisions formalise the position so far as the new ISC is concerned. The Government intends that, through the provisions in the memorandum of understanding from time to time, substantively all of central Government's intelligence and security activities will be subject to ISC oversight.
52. *Subsection (3)* provides three routes by which the ISC may consider particular operational matters. The first route is available where the ISC and the Prime Minister are satisfied that the particular operational matter is not part of any ongoing operation and is a matter of significant national interest (*subsection (3)(a)*).
53. The second route is where the Prime Minister asks the ISC to consider the particular operational matter (*subsection (3)(b)*).
54. The third route is where the ISC's consideration of a particular operational matter is limited to the consideration of information provided voluntarily to the ISC by the Agencies or a government department (*subsection (3)(c)*). Such information can be provided for these purposes in response to a request by the Committee as well as at the initiative of the relevant department.
55. For the first and second routes only, the ISC and the Prime Minister need, additionally, to be satisfied that the consideration of the particular operational matter is consistent with the Memorandum of Understanding agreed between them (*subsection (4)*).

*These notes refer to the Justice and Security Act 2013
(c.18) which received Royal Assent on 25 April 2013*

56. The Committee's powers to require the Agencies or other government departments to provide it with information on operational matters (see *paragraph 4* of Schedule 1) are available for the first and the second route but not for the third route.
57. The ISC created by the Intelligence Services Act 1994 did on occasion hear evidence, and report on operational matters, for instance, in its Report into the London Terrorist Attacks on 7 July 2005. With the formalisation of a role in oversight of operational matters, the Government expects the new ISC to provide such oversight on a more regular basis.
58. *Subsections (5) and (6)* make further provision in relation to the memorandum of understanding: it may include other provisions about the ISC; it must be agreed between the Prime Minister and the ISC; it may be altered with the agreement of the Prime Minister and the ISC; it must be published by the ISC and laid before Parliament.